

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of WILKINSON/RASNICK, Minors.

UNPUBLISHED

July 29, 2014

No. 320043

Wayne Circuit Court

Family Division

LC No. 11-501591-NA

Before: JANSEN, P.J., and SAAD and DONOFRIO, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(a)(ii) (abandonment), (c)(i) (conditions leading to adjudication continue to exist), (c)(ii) (other conditions exist and no reasonable likelihood they will be rectified), (g) (failure and inability to provide proper care and custody), and (j) (children likely harmed if returned). We affirm.

I. STANDARD OF REVIEW

To terminate a respondent's parental rights, the trial court must first find that at least one of the statutory grounds listed in MCL 712A.19b(3) has been established by clear and convincing evidence. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). We review the trial court's factual findings as well as its determination that a statutory ground has been established for clear error. *Id.*; see also MCR 3.977(K). A finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. *Id.*

If the trial court finds that there are grounds for termination of parental rights, it must terminate the parental rights if it finds that termination is in the child's best interests. MCL 712A.19b(5). A trial court may consider all the evidence in the record in making its best-interest determination. *In re Trejo*, 462 Mich 341, 356; 612 NW2d 407 (2000). The question of whether termination is in the best interests of the child is reviewed for clear error and must be supported by a preponderance of the evidence. *Id.*; *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013).

II. STATUTORY GROUNDS

Respondent's parental rights were terminated under MCL 712A.19b(3)(a)(ii), (c)(i), (c)(ii), (g), and (j), which provide:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

(a) The child has been deserted under either of the following circumstances:

* * *

(ii) The child's parent has deserted the child for 91 or more days and has not sought custody of the child during that period.

* * *

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

(ii) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

In this case, the trial court did not clearly err in finding that at least one statutory ground to terminate respondent's parental rights had been established by clear and convincing evidence. Respondent did not visit her children or contact the agency regarding visitation between June 22, 2011, and April 4, 2012. The agency reported that she had not made herself available at all from

September 2011 until March 2012. Since she did not seek custody of her children during that time, she deserted her children for more than 91 days, establishing MCL 712A.19b(3)(a)(ii).

Respondent also did not visit her children between April 2013 and July 16, 2013. She cancelled two visits for health reasons and her visits were temporarily suspended after allegations of physical abuse were made against her following an unauthorized visit on May 20, 2013. By the time of the October 2013 termination hearing respondent had not seen her children since April 2013. Respondent argues that she cannot be found to have abandoned her children when her visits were suspended by DHS. This claim is without merit. The record shows that visits were only briefly suspended. Respondent was asked to contact CPS so visits could be reinstated but she did nothing other than text the caseworker to inquire about visits sometime in June 2013. She never sought custody of the children or made real efforts to visit them.

Termination of parental rights was also proper under MCL 712A.19b(3)(c)(i), (g), and (j) because the conditions leading to adjudication continued to exist and respondent was unable to take proper care of her children. At the time of the adjudication respondent admitted being depressed and having a history of drug abuse. Although she entered inpatient rehabilitation in April 2011, she relapsed by taking heroin and Xanax. She admitted that her drug use impeded her ability to parent. She acknowledged not being fit to care for her children. Her children had not been enrolled in school since 2010. By the time of the termination hearing respondent had not addressed her substance abuse. She never completed inpatient drug treatment and did not consistently submit drug screens. Since 2011, when the children were placed in protective care, she was asked to submit 72 drug screens, but she gave only 19. She stopped submitting drug screens altogether in May or June 2013.

Moreover, contrary to respondent's claim that she addressed all of her issues, the trial court's record shows that respondent also did not adequately address her depression. There was no confirmation that respondent met her therapeutic goals. Her attendance at individual and family therapy was sporadic. Likewise, there is no evidence respondent achieved parental fitness. Respondent only completed seven of nine parenting classes after six referrals were made. There was concern that she failed to benefit from parenting classes given that Children's Protective Services received a referral for physical abuse during an unofficial visit at a relative's home.

Aside from exposing the children to risk of harm with drug use, failing to stabilize her depression, and not being able to demonstrate adequate parenting skills, there was no evidence respondent could materially provide for the children. Although she had some income, her employment was not regular or reliable. Similarly, she did not have independent housing. She was sharing a house with a roommate, and she could not bring her children to live there. Thus, given all the issues respondent faced, none of which was addressed or improved since the trial court asserted jurisdiction, respondent was unable to provide proper care of her children, and the

children would be at risk of harm in her care because of respondent's drug use, mental health issues, and lack of appropriate housing.¹

III. BEST-INTERESTS DETERMINATION

Finally, respondent argues that termination of her parental rights was not in the children's best interests.

Contrary to respondent's claim, termination of parental rights was in the best interests of the children because all four children had stated that they were ready for closure. They wanted to live a normal life. Moreover, there was no evidence of a strong bond between respondent and the children, and any bond that had existed was weakened by respondent's failure to visit them for long periods of time. At the beginning of the case, the children indicated that they did not want to visit with respondent so she could see what it would feel like to miss them. By September 2013, the children no longer wished to see respondent. Additionally, it is in the best interests of the children to be cared for by someone who can meet their emotional, physical, and material needs. See *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012). Given her unaddressed substance abuse, untreated depression, lack of commitment to the children, lack of housing, and lack of stable employment, respondent has not demonstrated that she could meet any of their needs.

Respondent argues that the trial court erred in its best-interest determination because it did not present testimony to justify its ruling. In its best interests findings the trial court articulated its findings in a summarizing statement, stating, "These children have been in foster care for a significant period of time and are at an age where permanent planning is essential for continued growth and development." Contrary to respondent's claim, there was testimony and evidence supporting the children's need for permanency and stability. Further, nothing in the record indicates that the trial court's findings would have been different if it had expanded its findings or articulated the exact same justifications, using each child's name. Although the interests of the children were somewhat different, in that the two girls were in a stable foster home interested in adopting them, and the two boys were not, all four wanted closure. The children were teenagers and needed a stable home so that they could complete their schooling

¹ Although the trial court did not specify in its decision what "other conditions" it believed existed, and no other conditions are obvious from our review of the record, the court erred in citing MCL 712A.19b(3)(c)(ii) as a ground for termination of respondent's parental rights, as petitioner acknowledges on appeal. However, this error was harmless because there was no error in finding that the remaining statutory grounds for termination were established by clear and convincing evidence and only one such ground was needed. *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

and launch into their adult lives. The trial court did not clearly err in finding that termination of respondent's parental rights was in their best interests.

Affirmed.

/s/ Kathleen Jansen
/s/ Henry William Saad
/s/ Pat M. Donofrio